

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No.26 of 2025

Reserved on: 09.07.2026

Decided on: 29.07.2026

Uploaded on: 29.07.2026

Mridul Nag and others

...Defendants/Petitioners

Versus

Anoop Dutta @Anup Dutta and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners: Mr. Neeraj Gupta, Senior Advocate with
Mr. Ajeet Jaswal, Advocate.

For the respondents: Mr. Deepak Gupta, Advocate, for
respondent No.1.
Mr. Vishav Deep Sharma, Additional
Advocate General, for proforma
respondent No.2-State.

Jiya Lal Bhardwaj, Judge

The petitioners/defendants No.1 to 3 have challenged the order dated 16.01.2025, passed by the learned Senior Civil Judge, Dharamshala, in Civil Suit for Recovery/151/2022, titled, **Anoop Dutta vs. Mridul Nag and others**, whereby the plaintiff/respondent No.1 was permitted to withdraw the suit instituted by him against the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

petitioners/defendants No.1 to 3 and proforma respondent/defendant No.4.

2. The parties in the present proceedings are referred as the plaintiff and defendants.

3. The Plaintiff had instituted the suit for granting a decree of recovery of Rs.30,00,000/- with interest @12% per annum on account of damages suffered by him at the behest of the defendants for registration of FIR No.130 of 2009 dated 22.04.2009.

4. Defendant No.4, who is proforma-respondent No.2 in the present proceedings had instituted an application under Order 7 Rule 10 of the Code of Civil Procedure (in short "CPC") for returning of plaint to the plaintiff for not complying with the mandatory provision of CPC, since the plaintiff prior to filing of the suit had not served a notice under Section 80 CPC upon him. As per the provisions of Section 80 CPC, no suit shall be instituted against the Government or a public officer in respect of any act purported to be done by such public officer in his official capacity, until the expiration of two months next after

notice in writing has been delivered to, or left at the office of the Secretary of the State Government.

5. The plaintiff filed reply to the application under Order 7 Rule 10 CPC. Thereafter the matter was listed for filing rejoinder on behalf of defendant No.4 to the reply filed by the plaintiff and reply by defendants No.1 to 3 to the application. However, when the matter was listed before the trial Court on 16.01.2025, the learned counsel appearing for the plaintiff had stated that he has instructions to withdraw the suit with liberty to file the same afresh and after recording his statement, the learned trial Court dismissed the suit as withdrawn with liberty to file afresh, subject to statutory period of limitation and other bars provided under law.

6. Defendants No.1 to 3 feeling aggrieved by the said order passed by the learned trial Court have challenged the same on the grounds that the liberty granted in favour of the plaintiff to institute a fresh suit, is bad in law. The learned trial Court did not decide the application under Order 7 Rule 10 CPC filed by defendant No.4 and further no application was filed by

the plaintiff to withdraw the suit. The learned trial Court had not recorded its satisfaction and thus, the order under challenge deserves to be quashed and set aside.

7. Learned counsel representing the plaintiff has supported the order passed by the learned trial Court and submitted that once the statement of the counsel for the plaintiff before the learned trial Court was recorded that he has instructions to withdraw the suit with liberty to file the same afresh, no illegality can be found with the said order passed by the learned trial Court inasmuch as, no prejudice has been caused to the defendants, since the learned trial Court while permitting the counsel for the plaintiff to withdraw the suit, has dismissed the suit as withdrawn, subject to statutory period of limitation and other bars provided under law. The learned trial Court had recorded the statement of the learned counsel and after satisfying itself that the suit instituted is having formal defect, granted the permission to withdraw the same with liberty to institute the fresh suit.

8. I have heard the learned counsel for the parties and

also perused the record carefully.

9. Mr. Neeraj Gupta, learned senior counsel duly assisted by Mr. Ajeet Jaswal, learned counsel for defendants No.1 to 3, vehemently argued that once the plaintiff had not filed an application for withdrawal of the suit, the learned trial Court could not have permitted him to withdraw the suit with liberty to institute the fresh suit. Further, the learned trial Court had to first decide the application filed under Order 7 Rule 10 CPC by defendant No.4 for returning of the plaint and not following the said procedure, the impugned order passed by the trial Court is not sustainable in the eyes of law. It was further argued that the learned trial Court has also not recorded its satisfaction while permitting the plaintiff to withdraw the suit with liberty to file fresh suit.

10. Before advertng to the submissions made by the learned senior counsel for the defendants No.1 to 3, it would be appropriate to reproduce the relevant provisions of Order XXIII, Rule 3 of CPC, which are as under:-

"1. *Withdrawal of suit or abandonment of part of claim.*

1.&2. *****

3. *Where the court is satisfied:*

(a) that a suit must fail by reason of some defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."

11. A perusal of the provisions clearly reveals that where the Court is satisfied that a suit must fail by reason of some defect or there are sufficient grounds for allowing the plaintiff to withdraw the suit with liberty to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. Once, the plaintiff had not issued the statutory notice under Section 80 CPC to defendant No.4-State, the Court, in its wisdom and satisfying itself that a suit shall fail by reason of formal defect, after recording the statement of the learned counsel for the plaintiff had permitted him to withdraw the suit, with a liberty to file fresh suit, subject to statutory period of limitation and other bars provided under law. The order under challenge does not reveal that the defendants had objected the withdrawal of the

suit. Once defendants No.1 to 3 did not object the withdrawal of the suit with liberty to file afresh, they cannot challenge the order passed by the learned trial Court. Further, the learned trial Court while permitting the plaintiff to withdraw the suit has protected the interest of defendants specifically observing that the liberty granted is subject to statutory period of limitation and other bars. Thus, it cannot be said that the jurisdiction, which has been vested with the learned trial Court has been exercised illegally or with material irregularity. Further, it cannot be said that the suit for want of notice under Section 80 CPC was not failing due to a formal defect. There is no requirement to file an application to withdraw the suit and the Court must satisfy about the formal defect. As already noticed above, the plaintiff had not served the notice under Section 80 CPC upon defendant No.4-State and thus, there was formal defect in the suit. The Court has been given wider discretion to allow the plaintiff to withdraw the suit even where the suit is not covered by clause(a) of Order 23 Rule 1(3) CPC and thus, no illegality has been committed by the learned trial Court while permitting the

plaintiff to withdraw the suit and file afresh.

12. The learned trial Court after recording the statement of the counsel representing the plaintiff has permitted him to withdraw the suit to file fresh suit protecting the interest of the defendants, irrespective of the application filed by him and thus, no illegality can be found with the said order.

13. Learned senior counsel representing defendants No.1 to 3 also vehemently argued that once the application moved by the defendant-State was not decided, the learned trial Court could not have proceeded further. However, the said submission deserves to be rejected on the ground that it was not the application filed by defendants No.1 to 3, but an application filed by defendant No.4-State, who is not aggrieved by the order.

14. Learned Senior counsel representing defendants No.1 to 3 had placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Arifa and others vs. Abhiman Apartment Cooperative Housing Society Limited and others,***

(2025) 10 SCC 700, to contend that the cause of action cannot be claimed merely because liberty has been granted, which remains subject to the law of limitation and other legal exceptions. It is true that the cause of action cannot be claimed merely because liberty has been granted which remains subject to limitation. However, in the present case, the learned trial Court has permitted the plaintiff to withdraw the suit with liberty to file a fresh suit, subject to statutory period of limitation and other bars provided under law. Therefore, it cannot be said that the interest of the defendants has not been taken care of while permitting the plaintiff to withdraw the suit.

15. Learned counsel representing the plaintiff has argued that since the defendants did not object to the withdrawal of the suit, they are precluded to challenge the same. Further no prejudice has been caused to them since liberty has been granted to the plaintiff to file the fresh suit subject to statutory period of limitation and other bars provided under the Act and thus, this Court while exercising the revisional jurisdiction may not like to interfere with the

impugned order.

16. Learned counsel for the plaintiff had further argued that the object of the provisions under Order XXIII Rule 1(3), is to advance substantial justice and once there was a formal defect for want of statutory notice issued to defendant No.4-State prior to institution of the suit, it was within the domain of the Court to permit the plaintiff to withdraw his suit with liberty to file afresh and once the learned trial Court had taken the said fact into account and satisfied itself of the fact that the suit would fail for the reason of formal defect, it had the jurisdiction to grant the permission to withdraw the suit. The Court cannot refuse such liberty to the plaintiff since no prejudice has been caused to the defendants, the impugned order under challenge does not require any interference.

17. As already discussed above, the defendants, at the time of withdrawing the suit did not raise any objection and it is not required that the plaintiff had to file an application for withdrawal of the suit. The learned trial Court was satisfied that there was a formal defect and further had wider powers to

permit the plaintiff to withdraw the suit with liberty to file afresh, recording of satisfaction is not mandatory especially when the statement of the counsel for the plaintiff was recorded and the defendants at that time did not object to the same. The learned trial Court has permitted the plaintiff to withdraw the suit with liberty to file a fresh suit, subject to statutory period of limitation and other bars provided under law. Therefore, no prejudice in any manner has been caused to the defendants.

18. Defendant No.4-State/Proforma respondent is not aggrieved by the order whereby the permission had been granted to the plaintiff to withdraw the suit with liberty to file afresh without deciding their application under Order 7 Rule 10 CPC. Thus, the order passed by the trial Court does not suffer from any illegality, inasmuch as the same is in accordance with law.

19. Learned counsel for the plaintiff had placed reliance upon the judgment passed by the Hon'ble Supreme Court in **V. Rajendran and another vs. Annasamy Pandian**, (2017) 5 SCC 63,

to contend that there is no requirement of filing a written application and the Court may on its own can grant the permission to the plaintiff to withdraw the suit, if it is satisfied that a suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit. Once, the suit was having formal defect for want of notice, no illegality has been committed by the trial Court. He further argues that the formal defect must be given a liberal meaning, which connotes various kinds of defects, not affecting the merits of the plea raised by either of the parties. The relevant paras of the aforementioned judgment are reproduced herein below:-

"10. In K.S. Bhoopathy v. Kokila², it has been held that it is the duty of the Court to be satisfied about the existence of "formal defect" or "sufficient grounds" before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the "formal defect" or "sufficient grounds", such right cannot be considered to be so absolute as to permit or encourage abuse of process of court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an

application is filed under Order 23 Rule 1(3) CPC, the Court must be satisfied about the "formal defect" or "sufficient grounds". "Formal defect" is a defect of form prescribed by the rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, misjoinder of parties, failure to disclose a cause of action, etc. "Formal defect" must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

11. In terms of Order 23 Rule 1(3)(b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the words "sufficient grounds", there are two views: one view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a), that is, formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause (b) should be read independent of the words a "formal defect" and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with "formal defect" envisaged under clause (a) of Rule 1 sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b), that is, "sufficient grounds".

20. A perusal of the aforesaid paragraphs clearly reveals that the formal defect must be given a liberal meaning and the Court has been given a wide discretion to allow withdrawal of a suit in the interest of justice. It has also been

held that the Court has been given wider discretion even where there is no formal defect, but sufficient grounds exist for allowing the plaintiff to institute a fresh suit. Once, the learned trial Court had exercised the jurisdiction vested in it, thereby protecting the interest of the defendants, I do not find any reason to interfere with the said order, especially, when it is not causing any prejudice or injustice to the defendants.

21. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. No order as to costs. Pending miscellaneous application(s), if any, shall also stand disposed of.

29th July, 2026
(ankit)

(Jiya Lal Bhardwaj)
Judge